

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

FILED

FEB 0 8 2012

**SECRETARY, BOARD OF
OIL, GAS & MINING**

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IN THE MATTER OF FORMAL	:	DIVISION'S REQUEST TO
RULEMAKING TO AMEND THE	:	COMMENCE FORMAL
COAL REGULATORY PROGRAM	:	RULEMAKING
R645 RULES FOR OWNERSHIP AND	:	
CONTROL AS REQUESTED	:	DOCKET NO. 2012-008
BY OFFICE OF SURFACE MINING	:	CAUSE NO. RCOAL-2012-01

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The Division of Oil, Gas & Mining ("Division") hereby requests that the Board of Oil, Gas & Mining ("Board") at its regularly scheduled hearing on March 28, 2012 commence formal rulemaking to modify portions of the current R645 rules of the Utah Coal Regulatory Program on the subject collectively referred to as ownership and control ("O&C"). The Division hereby requests that the Board file the proposed changes attached to this Request in accordance with the requirements of the Utah Administrative Rulemaking Act, Utah Code §§63G-3-101 et seq. (2011), schedule a public hearing, and take such action as required to formally adopt these proposed changes to current rules. The proposed rule changes are presented to the Board with this request to commence formal rulemaking as the result of an extensive informal rules review process conducted by the Division and the Board.

The informal rulemaking process was undertaken to address the requirement by the Office of Surface Mining ("OSM") for state rulemaking on O&C as identified in an OSM letter to the Division dated October 2, 2009. OSM published the relevant final rules in the Federal Register on October 28, 1994, December 19, 2000, and December 3, 2007, but OSM deferred the requirement of state rulemaking until all three of the referenced final rules were completed. The informal rulemaking process included briefings to the Board in January 2010, December 2011, and January 2012. Since the request for this rulemaking originated with OSM, the federal agency with oversight over the Division's Coal Regulatory Program, the Division worked with the Denver OSM office


extensively during the informal rulemaking process to develop draft rules which would meet the needs of Utah and OSM. The Informal Rules Review Group was also provided the opportunity to review the draft O&C rules, and only the Utah Bureau of Land Management responded.

Attached are the proposed rule amendments, dated January 27, 2012, with deletions shown in strike-out and additions shown as underlined. If the Board decides to commence formal rulemaking, the proposed rules will be filed with the Division of Administrative Rules via an eRules filing. Provided the eRules filing can be completed by April 2, 2012 as expected, the proposed rule amendments will appear in the Utah State Bulletin on April 15, 2012. The Board may take public comment at a Board hearing on the proposed rules after they are published in the Utah State Bulletin. A public hearing may be held as part of the regularly scheduled Board hearing on April 25, 2012.

A minimum 30-day comment period extending through May 15, 2012 is required by the Utah Administrative Rulemaking Act. Assuming no changes are made to the rules as proposed, the Board could grant its final approval of the rules at the regular hearing day on May 23, 2012 and the changes could be made effective on the day of the May Board Hearing, since it would meet the requirement of no fewer than seven calendar days after the close of the public comment period.

The Division requests that the Board commence formal rulemaking, proceed to file the proposed rules with the Division of Administrative Rules, set a date for a public hearing, and take necessary action to formally adopt the rule changes as proposed on the attached exhibit.

DATED this 7th day of February, 2012.


Steven F. Alder,
Assistant Attorney General
For Utah Division of Oil, Gas, & Mining

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing DIVISION'S REQUEST TO COMMENCE FORMAL RULEMAKING for Docket No. 2012-008, Cause No. RCOAL-2012-01 to be mailed with postage prepaid, this 8th day of February, 2012, to the following:

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Utah Division of Oil, Gas & Mining
Coal Program: Ownership & Control
Rulemaking Process: Formal
January 27, 2012

R645. Natural Resources; Oil, Gas and Mining; Coal.

R645-100. Administrative: Introduction.

R645-100-200. Definitions.

As used in the R645 Rules, the following terms have the specified meanings:

"Applicant" means any person seeking a permit, permit change, and permit renewal, transfer, assignment, or sale of permit rights from the Division to conduct coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Applicant/Violator System" (AVS) means an automated information system of applicant, permittee, operator, violation and related data the Office maintains to assist in implementing the Federal Act.

Comment [D1]: New or amended definitions per 30CFR701.5

"Application" means the documents and other information filed with the Division under the R645 Rules for the issuance of permits; permit changes; permit renewals; and transfer, assignment, or sale of permit rights for coal mining and reclamation operations or, where required, for coal exploration.

"Continuously Mined Areas" means land which was mined for coal by underground mining operations prior to August 3, 1977, the effective date of the Federal Act, and where mining continued after that date.

"Control or Controller" means:

(a) A permittee of a coal mining and reclamation operation;

(b) An operator of a coal mining and reclamation operation; or

(c) Any person who has the ability to determine the manner in which a coal mining and reclamation operation is conducted.

"Cooperative Agreement" means the agreement between the Governor of the State of Utah and the Secretary of the Department of the Interior as published at 30 CFR 944.30.

"Irreparable Damage to the Environment" means any damage to the environment in violation of the Act, the State Program, or the R645 Rules that cannot be corrected by actions of the applicant.

~~"Knowingly" means for the purposes of R645-402, that an individual knew or had reason to know in authorizing, ordering, or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure, or refusal.~~

"Knowing or Knowingly" means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

"Land Use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral

part of the use. Changes of land use from one of the following categories to another will be considered as a change to an alternative land use which is subject to approval by the Division.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

~~"Owned or controlled" and "owns or controls" means any one or a combination of the relationships specified in paragraphs (a) and (b) of this definition:~~

~~— (a)(1) Being a permittee of a coal mining and reclamation operation;~~
~~— (2) Based on the instrument of ownership or voting securities, owning of record in excess of 50 percent of an entity; or~~

~~— (3) Having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts coal mining and reclamation operations.~~

~~— (b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant coal mining and reclamation operation is conducted:~~

~~— (1) Being an officer or director of an entity;~~
~~— (2) Being the operator of a coal mining and reclamation operation;~~
~~— (3) Having the ability to commit the financial or real property assets or working resources of an entity;~~

~~— (4) Being a general partner in a partnership;~~
~~— (5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity; or~~

~~— (6) Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts coal mining and reclamation operation.~~

"Own, Owner, or Ownership" means being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity, except when used in the context of ownership of real property.

"Parent Corporation" means corporation which owns or controls the applicant.

"Toxic Mine Drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or coal mining and reclamation operations which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

"Transfer, Assignment, or Sale of Permit Rights" means a change ~~in ownership or other effective control over the right to conduct coal mining and reclamation operations under a permit issued by the Division of a permittee.~~

"UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES" means coal mining and reclamation operations incident to the extraction of coal by underground methods including a combination of (a) underground extraction of coal or in situ processing, construction use, maintenance, and reclamation of roads, above-ground

repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and (b) underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"Valley Fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten degrees.

"Violation," when used in the context of the permit application information or permit eligibility requirements of Section 40-10-10(2) and Subsection 40-10-11(3) and related rules, means:

(a) A failure to comply with an applicable provision of a federal or state law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

(b) A noncompliance for which the Division or the Office have provided one or more of the following types of notice:

(i) A notice of violation under R645-400-320;

(ii) A cessation order under R645-400-310;

(iii) A final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under R645-401 or R645-402;

(iv) A bill or demand letter pertaining to delinquent reclamation fees owed under 30 CFR 870, Abandoned Mine Reclamation Fund – Fee Collection and Coal Reporting; or

(v) A notice of bond forfeiture under R645-301-880.900, when:

(A) One or more violations upon which the forfeiture was based have not been abated or corrected;

(B) The amount forfeited and collected is insufficient for full reclamation under R645-301-880.931, the Division orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order; or

(C) The site is covered by an alternative bonding system approved under 30 CFR 800.11(e), that system requires reimbursement of any reclamation costs incurred by the system above those covered by any site-specific bond and the person has not complied with the reimbursement requirement and paid any associated penalties.

"Violation, Failure, or Refusal" means for the purposes of R645-402, ~~(1a)~~ A violation of a condition of a permit issued under the State Program, or ~~(2b)~~ A failure or refusal to comply with any order issued under UCA 40-10-22, or any order incorporated in a final decision issued under UCA 40-10-20(2) or R645-104-500.

"Violation Notice" means any written notification from a governmental entity of a violation of law, as specified in the definition of violation in this section, whether by letter, memorandum, legal or administrative pleading, or other written communication.

"Water Supply", "State-appropriated Water", and "State-appropriated Water

Supply" are all synonymous terms and mean, for the purposes of the R645 Rules, state appropriated water rights which are recognized by the Utah Constitution or Utah Code.

~~"Violation Notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.~~

"Water Table" means the upper surface of a zone of saturation where the body of ground water is not confined by an overlying impermeable zone.

~~"Willful or Willfully" means for the purposes of R645-402, that an individual person acted (1a) either intentionally, voluntarily, or consciously, and (2b) with intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out an corporate permittee's action or omission that constituted a violation, failure, or refusal.~~

~~"Willful Violation" means an act or omission which violates the State Program or any permit condition, committed by a person who intends the result which actually occurs.~~

R645-300. Coal Mine Permitting: Administrative Procedures.

R645-300-100. Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.

The rules in R645-300-100 present the procedures to carry out the entitled activities.

...

130. Review of Permit Application.

131. General.

131.100. The Division will review the application for a permit, permit change, or permit renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the Division, either granting, requiring modification of, or denying the application. If an informal conference is held under R645-300-123 the decision will be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under R645-300-210.

131.110. Application review will not exceed the following time periods:

131.111. Permit change applications.

131.111.1. Significant revision - 120 days.

131.111.2. Amendments - 60 days.

131.112. Permit renewal - 120 days.

131.113. New underground mine applications - One year.

131.114. New surface mine applications - One year.

131.120. Time will be counted as cumulative days of Division review and will not include operator response time or time delays attributed to informal or formal conferences or Board hearings.

131.200. The applicant for a permit or permit change will have the burden of establishing that their application is in compliance with all the requirements of the State Program.

131.300. If, after review of the application for a permit, permit change, or permit renewal, additional information is required, the Division will issue a written finding

providing justification as to why the additional information is necessary to satisfy the requirements of the R645 Rules and issue a written decision requiring the submission of the information.

132. Review of Compliance and Entry of Information into the AVS. Based upon an administratively complete application, the Division will undertake the reviews required by R645-300-132 before making a permit eligibility determination. The Division will enter into AVS the information included in the application required by R645-301-112 and the forfeitures, unabated or uncorrected violations, cessation orders or civil penalties listed as required by R645-301-113. The Division must update the AVS with the information required and provided under R645-301-112 and R645-301-113 upon verification of any additional information submitted or discovered during the permit application process.

Comment [D2]: Basis is 773.8

132.100. The Division will review available information provided in accordance with R645-301-112.340 through R645-301-112.420 and R645-301-113 on violations and permit history, state and federal failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued under section 518 of the ~~federal~~ Federal Act, SMCRA-derived laws of other states, and ~~section~~ Section 40-10-20 of the Act, bond forfeitures where violations on which the forfeitures are based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of the Act, derivative laws of other states and federal air and water protection laws, rules and regulations incurred at any coal mining and reclamation operations connected with the applicant, the operator, the operations the applicant owns or controls, and the operations the operator owns or controls.

Comment [D3]: Basis is 773.9-11

Comment [p4]: State Counterpart to 778.12

Comment [sou5]: State Counterpart to 30 CFR 778.14.

132.100.1 In addition, the Division will review ownership information provided under R645-301-112, and any other information available to review the applicant's and applicant's operator's organizational structure and ownership or control relationships; and the Division will request a narrative report from the AVS.

Comment [sou6]: State Counterpart to 778.12.

132.100.2 The Division will determine if the applicant or operator have previous mining experience, and if none, the Division may conduct a review under R645-300-185.300 or authorize the AVS office to review to determine if someone else with mining experience controls the mining operation.

Comment [D7]: State Counterpart to 774.11(f).

132.100.3 Based upon the above violations, permit history, ownership reviews and the AVS report, the The Division will then make a finding that neither the applicant, the operator, nor any person who owns or controls operations the applicant owns or controls or operations the operator owns or controls, are nor any person owned or controlled by the applicant is facing permanent permit ineligibility under R645-300-183 or currently in violation of any law, rule, or regulation referred to in R645-300-132. If such a finding cannot be made, the Division will require the applicant, before issuance of the permit, to either:

132.110. Submit to the Division proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

132.120. Establish for the Division that the applicant or operator, or any person owned ~~or controlled~~ by the applicant or operator, or any person who owns or controls the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review

authority under R645-300-220 either denies a stay applied for in the appeal or affirms the violation, then the applicant will within 30 days submit the proof required under R645-300-132.110; or:

132.121. The applicant or operator is pursuing a good faith challenge to all pertinent ownership or control listings or findings under R645-300-132.150 or an administrative or judicial appeal of all pertinent ownership or control listings or findings, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.

Comment [sou8]: Basis is 773.14(b)(3).

132.150. AVS ownership and control information may be challenged by the owner or controller of an entire coal mining and reclamation operation, or any portion or aspect thereof or by an applicant or permittee affected by an ownership or control listing or finding.

Comment [sou9]: Basis is 773.25

132.150.1. To challenge an ownership or control listing or finding, a person must submit a written explanation of the basis for the challenge, along with any evidence or explanatory materials in accordance with R645-300-132.150.7 to the regulatory authority, as identified in the following statement. If the challenge concerns a pending state or federal permit application, then the person must submit written explanation to the regulatory authority with the jurisdiction over the application. If the person is not currently seeking a permit, then the written explanation must be submitted to the regulatory authority with jurisdiction over the coal mining and reclamation operation.

Comment [sou10]: Basis is 773.26(a).

132.150.2. The provisions of this subsection and of R645-300-132.150.7 through R645-300-132.150.9 apply only to challenges to ownership or control listings or findings. A person may not use these provisions to challenge liability or responsibility under any other provision of the Act or its implementing rules.

Comment [sou11]: Basis is 773.26(b).

132.150.3. When the challenge concerns a violation under the jurisdiction of a different regulatory authority, the regulatory authority with jurisdiction over the permit application or permit must consult the regulatory authority with jurisdiction over the violation and the AVS Office to obtain additional information.

Comment [sou12]: Basis is 773.26(c).

132.150.4. A regulatory authority responsible for deciding a challenge under R645-300-132.150.1 may request an investigation by the AVS Office.

Comment [sou13]: Basis is 773.26(d).

132.150.5. At any time a person listed in AVS as an owner or controller of a coal mining and reclamation operation may request an informal explanation from the AVS Office as to the reason they are shown in AVS in an ownership or control capacity. The AVS Office will provide a response within 14 days, describing why the person is listed in AVS.

Comment [sou14]: Basis is 773.26(e).

132.150.6. A challenge to the listing of ownership or control, or a finding of ownership or control made under R645-300-185.300 through R645-300-185.700 must prove by a preponderance of the evidence that the person does not own or control the entire operation or relevant portion or aspect thereof, or did not own or control the entire operation or relevant portion or aspect thereof during the relevant time period.

Comment [sou15]: Basis is 773.27(a).

132.150.7. In meeting the burden of proof, the person must present reliable, credible, and substantial evidence and any explanatory materials to the regulatory authority, such as, but not limited to: notarized affidavits containing specific facts concerning the duties performed for an operation, the beginning and ending dates of ownership and control of the operation, and the nature and details of any transaction

Comment [sou16]: Basis is 773.27(b).

creating or severing the person's ownership or control of the operation; certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records; certified copies of documents filed with or issued by any state, municipal, or federal governmental agency. The materials presented in connection with the challenge will become part of the permit file, an investigation file, or another public file. If requested, the Division will hold as confidential any information submitted under this paragraph which is not required to be made available to the public under R645-100-700 and R645-300-124.

132.150.8. The Division will review and investigate the evidence and explanatory materials submitted under R645-300-132.150.1 within 60 days of receipt, along with any other reasonably available information bearing on the challenge, and issue a written decision to the person presenting the challenge. The decision must state whether the person owns or controls the relevant coal mining and reclamation operation, or owned or controlled the operation, during the relevant time period.

132.150.9. The Division will provide the person with a copy of the decision by either certified mail, return receipt requested, or any means consistent with the rules governing service of a summons and complaint under R641. Service of the decision is complete upon delivery and is not incomplete if you refuse to accept delivery. The Division will post all decisions made under this subsection on AVS.

132.150.10. Any person who receives a written decision under R645-300-132.150.9, and who wishes to appeal that decision, must exhaust administrative remedies under the procedures at R645-300-210, before seeking judicial review.

132.150.11. Following the Division's decision or any decision by a reviewing administrative or judicial tribunal, the Division must review the information in AVS to determine if it is consistent with the decision. If it is not, the Division must promptly revise the information in AVS to reflect the decision.

132.200. Any permit that is issued on the basis of proof submitted under R645-300-132.110 or pending the outcome of an appeal described in R645-300-132.120 will be issued conditionally provisionally issued.

132.300. If the Division makes a finding that the applicant, or anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, the application will not be granted. Before such a finding becomes final, the applicant or operator will be afforded an opportunity for an adjudicatory hearing on the determination as provided for in R645-300-210.

132.400. Permit Eligibility Determination. Based on the reviews required under R645-301-132.100, the Division will determine whether the applicant is eligible for a permit under Subsection 40-10-11(3)(c) of the Act.

132.410. Except as provided in R645-300-132.500 and R645-300-132.200, the applicant is not eligible for a permit if the Division finds any coal mining and reclamation operation that:

Comment [p17]: State counterpart to 30CFR 840.14

Comment [sou18]: Basis is 773.28(a).

Comment [sou19]: Basis is 773.28(b), (c) and (d).

Comment [sou20]: Basis is 773.28(e).

Comment [sou21]: Basis is 773.28(f).

Comment [D22]: Basis is 773.14(b).

Comment [sou23]: "Own" is now separately defined from "Control." This language mirrors that of 30CFR773.12.

Comment [sou24]: Basis is 773.12

Comment [sou25]: Basis 773.12(a)

132.410.1. The applicant directly owns or controls has an unabated or uncorrected violation; or

Comment [sou26]: Basis 773.12(a)(1)

132.410.2. The applicant or the applicant's operator indirectly control has an unabated or uncorrected violation and the applicant's or the applicant's operator's control was established or the violation was cited after November 2, 1988.

Comment [sou27]: Basis 773.12(a)(2)

132.420. The Division will not issue a permit if the applicant or the applicant's operator are permanently ineligible to receive a permit under R645-300-183.

Comment [sou28]: Basis 773.12(b)

132.430. After the Division approves a permit under R645-300-133, the Division will not issue the permit until the applicant complies with the information update and certification requirement of R645-301-112.900. After the applicant completes the requirements of R645-301-112.900, the Division will again request a compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect the applicant's permit eligibility under R645-301-132.410 and R645-301-132.420. The Division will request this report no more than five business days before permit issuance under R645-300-150.

Comment [sou29]: State counterpart to 774.11 Post Permit Issuance Requirements.

Comment [sou30]: Basis 773.12(c)

Comment [sou31]: New rule written to correspond to 30 CFR 773.15.

Comment [sou32]: R645-301-112.900 expanded to include new requirements of 30 CFR 778.9(d).

132.440. If the applicant is ineligible for a permit under R645-300-132.400, the Division will send the applicant written notification of the decision. The notice will explain why the applicant is ineligible and include notice of the applicant's appeal rights under R645-300-200.

Comment [sou33]: Basis is 773.12(d)

132.500. Unanticipated events or conditions at remining sites.

132.510. The applicant is eligible for a permit under R645-300-132.400 if an unabated violation:

Comment [sou34]: Basis is 773.13.

132.510.1. Occurred after October 24, 1992; and

Comment [sou35]: New rule corresponding to 30 CFR 773.12 Permit Eligibility.

132.510.2. Resulted from an unanticipated event or condition at a coal mining and reclamation operation on lands that are eligible for remining under a permit that was held by the person applying for the new permit.

Comment [sou36]: Basis is 773.13(a)(1).

Comment [sou37]: Basis is 773.13(a)(2).

132.520. For permits issued under R645-302-240, an event or condition is presumed to be unanticipated for the purpose of R645-300-132.500 if it:

Comment [sou38]: Basis is 773.13(b).

132.520.1. Arose after permit issuance;

Comment [sou39]: Corresponds to new 30 CFR 785.25 lands eligible for remining.

132.520.2. Was related to prior mining; and

Comment [sou40]: Basis is 773.13(b)(1).

132.520.3. Was not identified in the permit application.

Comment [sou41]: Basis is 773.13(b)(2).

Comment [sou42]: Basis is 773.13(b)(3).

133. Written Findings for Permit Application Approval. No permit application or application for a significant revision of a permit will be approved unless the application affirmatively demonstrates and the Division finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

133.100. The application is complete and accurate and the applicant has complied with all the requirements of the Federal Act and the State Program;

133.200. The proposed permit area is:

133.210. Not within an area under study or administrative proceedings under a petition, filed pursuant to R645-103-400 or 30 CFR 769, to have an area designated as unsuitable for coal mining and reclamation operations, unless the applicant demonstrates that before January 4, 1977, substantial legal and financial commitments were made in relation to the operation covered by the permit application; or

133.220. Not within an area designated as unsuitable for coal mining and reclamation operations pursuant to R645-103-300 and R645-103-400 or 30 CFR 769 or

within an area subject to the prohibitions of R645-103-224;

133.300. For coal mining and reclamation operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Division the documentation required under R645-301-114.200;

133.400. The Division has made an assessment of the probable cumulative impacts of all anticipated coal mining and reclamation operations on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

133.500. The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

133.600. The Division has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Division has determined that no additional protection measures are necessary; and

133.700. The applicant has:

133.710. Demonstrated that reclamation as required by the Federal Act and the State Program can be accomplished under the reclamation plan contained in the permit application.

133.720. Demonstrated that any existing structure will comply with the applicable performance standards of R645-301 and R645-302.

133.730. Paid all reclamation fees from previous and existing coal mining and reclamation operations as required by 30 CFR Part 870.

133.740. Satisfied the applicable requirements of R645-302.

133.750. If applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of R645-301-353.400.

133.800. For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of R645-301-553.500, the site of the operation is a previously mined area as defined in R645-100-200.

133.900. For permits to be issued for proposed remining operations as defined in R645-100-200 and reclaimed in accordance with R645-301-553, the permit application must contain the following information:

133.910. Lands eligible for remining;

133.920. An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

133.930. Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the State Program can be accomplished.

133.1000. The applicant is eligible to receive a permit, based on the reviews under ~~R645-300-100-131~~ through and R645-300-132-300.

134. Performance Bond Submittal. If the Division decides to approve the

Comment [sou43]: This rule was recently written under the VER rule changes. This rule would be improved by referencing new rules written under permit eligibility, specifically replacing the reference to R645-300-100 with R645-300-131.

application, it will require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of R645-301-800.

140. Permit Conditions. Each permit issued by the Division will be subject to the following conditions:

141. The permittee will conduct coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to R645-301-800.

142. The permittee will conduct all coal mining and reclamation operations only as described in the approved application, except to the extent that the Division otherwise directs in the permit.

143. The permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program.

144. Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee will allow the authorized representatives of the Division to:

144.100. Have the right of entry provided for in R645-400-110 and R645-400-220.

144.200. Be accompanied by private persons for the purpose of conducting an inspection in accordance with R645-400-100 and R645-400-200 when the inspection is in response to an alleged violation reported to the Division by the private person.

145. The permittee will take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

145.100. Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

145.200. Immediate implementation of measures necessary to comply; and

145.300. Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

146. As applicable, the permittee will comply with R645-301 and R645-302 for compliance, modification, or abandonment of existing structures.

147. The operator will pay all reclamation fees required by 30 CFR Part 870 for coal produced under the permit, for sale, transfer or use.

148. Within 30 days after a cessation order is issued under R645-400-310, except where a stay of the cessation order is granted and remains in effect, the permittee will either submit the following information current to when the order was issued or inform the Division in writing that there has been no change since the immediately preceding submittal of such information:

148.100. Within 60 days of any addition, departure, or change in position of any person identified in R645-301-112.300, the applicant must provide the information required under R645-301-112.310 through R645-301-112.330 and the date of any departure. Any new information needed to correct or update the information previously submitted to the Division by the permittee under R645-301-112.300.

Comment [D44]: Basis is 774.12(c)

148.200. If not previously submitted, the information required from a permit applicant by R645-301-112.300.

150. Permit Issuance and Right of Renewal.

151. Decision. If the application is approved, the permit will be issued upon submittal of a performance bond in accordance with R645-301-800. If the application is disapproved, specific reasons therefore will be set forth in the notification required by R645-300-152.

152. Notification. The Division will issue written notification of the decision to the following persons and entities:

152.100. The applicant, each person who files comments or objections to the permit application, and each party to an informal conference;

152.200. The local governmental officials in the local political subdivision in which the land to be affected is located within 10 days after the issuance of a permit, including a description of the location of the land; and

152.300. The Office.

153. Permit Term. Each permit will be issued for a fixed term of five years or less, unless the requirements of R645-301-116 are met.

154. Right of Renewal. Permit application approval will apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with R645-300-151 will carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with R645-303-230.

155. Initiation of Operations.

155.100. A permit will terminate if the permittee has not begun the coal mining and reclamation operation covered by the permit within three years of the issuance of the permit.

155.200. The Division may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that such an extension of time is necessary, if:

155.210. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

155.220. There are conditions beyond the control and without the fault or negligence of the permittee.

155.300. With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee will be deemed to have commenced coal mining and reclamation operations at the time that the construction of the synthetic fuel or generating facility is initiated.

155.400. Extensions of time granted by the Division under R645-300-155 will be specifically set forth in the permit, and notice of the extension will be made public by the Division.

160. Improvidently Issued Permits: Review Procedures.

161. Permit review. When the Division has reason to believe that it improvidently issued a coal mining and reclamation permit it will review the circumstances under which the permit was issued, and make a preliminary finding using the criteria in R645-300-162. Where the Division finds that the permit was improvidently issued, it shall comply with R645-300-163.

Comment [D45]: Basis is 773.21.

161.100. The Division will make a preliminary finding that a permit was improvidently issued if, under the permit eligibility criteria of R645-300-132, the permit

Comment [sou46]: Basis is 773.21(a).

should not have been issued because the permittee or operator owned or controlled a coal mining and reclamation operation with an unabated or uncorrected violation; and

161.110. The permittee or operator continues to own or control the operation with the unabated or uncorrected violation; and

161.120. The violation remains unabated or uncorrected; and

161.130. The violation would cause the permittee or operator to be ineligible under the permit eligibility criteria of R645-300-132.

161.200. The Division will serve the permittee with a written notice of the preliminary finding which are based on evidence sufficient to establish a *prima facie* case that the permit was improvidently issued.

161.300. Within 30 days of receiving the written notice of preliminary finding, the permittee may challenge the preliminary finding, under the provisions of R645-300-162 or R645-300-132.150, by providing the Division with evidence as to why the permit was not improvidently issued under the criteria in R645-300-162.

162. Review criteria. The Division will make a preliminary finding that a coal mining and reclamation permit was improvidently issued if:

162.100. Under the violations review criteria of the regulatory program at the time the permit was issued;

162.110. The Division should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

162.120. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

162.200. The violation, penalty or fee;

162.210. Remains unabated or delinquent; and

162.220. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

162.300. The permittee or operator continues to own or control the operation with the unabated or uncorrected violation; the violation remains unabated; and the violation would cause the operator or permittee to be ineligible under the permit eligibility criteria of R645-300-132;

~~Where the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists, or where the ownership or control link was severed the permittee continues to be responsible for the violation, penalty or fee.~~

162.310. In the absence of a request for judicial review, the disposition of a challenge and any subsequent administrative review referenced in R645-300-132.121 affirms the validity of the violation or the ownership or control listing or finding; or

162.320. The initial judicial review decision referenced in R645-300-132.150 affirms the validity of the violation or the ownership or control listing or finding.

163. Remedial Measures.

When the Division, under R645-300-162 finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued it will use one or

Comment [sou47]: Basis is 773.21(b)(1).

Comment [sou48]: Basis is 773.21(b)(2).

Comment [sou49]: Basis is 773.21(b)(3).

Comment [sou50]: Basis is 773.21(c).

Comment [sou51]: Basis is 773.21(d).

Comment [sou52]: Rules cited correspond to 30 CFR 773.25 and 773.27.

Comment [D53]: Basis is 773.21(a).

Comment [sou54]: Basis is 773.21

Comment [sou55]: Basis is 773.14(c)(3).

Comment [sou56]: Basis is 773.14(c)(4).

more of the following remedial measures:

163.100. Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

163.200. Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

163.300. Suspend the permit until the violation is abated or the penalty or fee is paid; or

163.400. Rescind the permit under R645-300-164.

164. Improvidently Issued Permits: Rescission procedures. When the Division under R645-300-163 elects to rescind an improvidently issued permit or provisionally issued permit under R645-300-132.200, it will post the notice at the Division office closest to the permit area and serve on the permittee a written notice of proposed suspension and rescission which includes the reasons for the finding of the regulatory authority under R645-300-162 and states that:

164.100. Automatic suspension and rescissions. After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee obtains temporary relief under the appeal rights of R645-300-210 or if on appeal, the permittee submits proof, and the regulatory authority finds, that;

164.110. The finding of the Division under R645-300-162 was erroneous;

164.120. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

164.130. The violation, penalty or fee is the subject of a good faith appeal, unless there is an initial judicial decision affirming the violation and that decision remains in force, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

164.140. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee; or

164.150. The permittee is pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding under R645-300-132.150, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.

164.200. Cessation of operations. After permit suspension or rescission, the permittee shall cease all coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the Division; and,

164.300. Right to appeal. The permittee may file an appeal for administrative review of the notice under R645-300-200.

170. Final Compliance Review

After an application is approved, but before the permit is issued, the Division will reconsider its decision to approve the application based on the compliance review required by rule R645-300-132.100 and in light of any new information submitted under

Comment [D57]: Basis is 773.22(a)(2).

Comment [sou58]: Basis is 773.23(C)(2).

Comment [sou59]: Basis is 773.22(a).

Comment [sou60]: Basis is 773.22(d).

Comment [sou61]: Basis is 773.23(a)(4).

Comment [sou62]: Basis is 773.23(a)(6).

R645-301-112.900 and R645-301-113.400.

171. Certifying and Updating Existing Permit Application Information. If the applicant has previously applied for a permit and the required information is already in AVS, then the applicant may update the information as follows:

171.100. If all or part of the information already in AVS is accurate and complete, then the applicant may certify to the Division by swearing or affirming, under oath and in writing, that the relevant information in AVS is accurate, complete, and up to date.

171.200. If part of the information in AVS is missing or incorrect, then the applicant must submit to the Division the necessary information or corrections and swear or affirm, under oath and in writing, that the information the applicant submits is accurate and complete.

171.300. If the applicant can neither certify that the data in AVS is accurate and complete nor make needed corrections, then the applicant must include in the permit application the information required under R645-301-112.

172. The applicant must swear or affirm, under oath and in writing, that all information provided in an application is accurate and complete. The Division will follow the requirements of R645-300-132.430 and R645-301-113.400 prior to permit issuance.

173. The Division may establish a central file to house the applicant's identity information, rather than place duplicate information in each of the applicant's permit application files. The Division will make the information available to the public upon request.

180. Post Permit Issuance Requirements for the Division and Other Actions Based on Ownership, Control, and Violation Information.

181. Within thirty days, the Division must enter in the AVS the data as follows:

181.100. Permit records after the permit is issued or subsequent changes made;

181.200. Unabated or uncorrected violations after the abatement or correction period for a violation expires;

181.300. Changes to information initially required to be provided by an applicant under R645-301-112 after receiving notice of a change; and

181.400. Changes in violation status after abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.

182. Any time the Division discovers that any person owns or controls an operation with an unabated or uncorrected violation, the Division will determine whether enforcement action is appropriate under R645-400, R645-402 or R645-403. The Division must enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

183. The Division must serve a preliminary finding of permanent permit ineligibility on an applicant or operator, based on the control relationships and violations that would make the applicant or operator ineligible for a permit under R645-300-132.400 and R645-301-113.300, if the following criteria are met:

183.100. The applicant or operator has controlled or currently is controlling a coal mining and reclamation operation with a demonstrated pattern of willful violations under R645-301-113.300; and

Comment [D63]: Basis is 778.9

Comment [sou64]: Basis is 778.9(a)(1).

Comment [sou65]: Basis is 778.9(a)(2).

Comment [sou66]: Basis is 778.9(a)(3).

Comment [sou67]: Basis is 778.9(b).

Comment [sou68]: Basis is 778.9(c).

Comment [D69]: Basis is 774.11

Comment [sou70]: Basis is 774.11(a).

Comment [sou71]: Basis is 774.11(a)(1).

Comment [sou72]: Basis is 774.11(a)(2).

Comment [sou73]: Basis is 774.11(a)(3).

Comment [sou74]: Basis is 774.11(a)(4).

Comment [sou75]: Basis is 774.11(b) and 773.28(d).

Comment [sou76]: R645-402 is the State equivalent of 30 CFR 846, Individual Civil Penalties and R645-403 is the equivalent of 30 CFR 847, Alternative Enforcement.

Comment [sou77]: Basis is 774.11(c)

Comment [sou78]: Basis is 774.11(c)(1).

183.200. The violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate your intent not to comply with the Act, its implementing rules, the State program, or the permit.

Comment [sou79]: Basis is 774.11(c)(2).

184. The permittee, applicant or operator may request a hearing on a preliminary finding of permanent permit ineligibility under R645-300-200.

Comment [sou80]: Basis is 774.11(d).

185. Entry into the Applicant Violator System (AVS) Database.

Comment [sou81]: Basis is 774.11(e).

185.100. If the applicant, permittee or operator does not request a hearing, and the time for seeking a hearing has expired, the Division will enter the permanent ineligibility finding into AVS.

Comment [sou82]: Basis is 774.11(e)(1).

185.200. If the applicant, permittee, or operator requests a hearing, the Division will enter a permanent ineligibility finding into the AVS, only if that finding is upheld on administrative appeal.

Comment [sou83]: Basis is 774.11(e)(2).

185.300. At any time, the Division may identify any person who owns or controls an entire operation or any relevant portion or aspect thereof. If the Division identifies such a person, the Division must issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The Division's written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control.

Comment [sou84]: Basis is 774.11(f).

185.400. After the Division issues a written preliminary finding under R645-300-185.300, the Division will allow the person subject to the preliminary finding 30 days in which to submit any information tending to demonstrate their lack of ownership or control.

Comment [sou85]: Basis is 774.11(g).

185.500. If after reviewing any information provided under R645-300-185.400, the Division is persuaded that the person is not an owner or controller, the Division will serve a written notice to that effect.

Comment [sou86]: Basis is 774.11(g).

185.600. If, after reviewing any information provided under R645-300-185.400, the Division still finds that a person is an owner or controller, or if the person does not submit any information within the 30-day period, the Division will issue a written finding and enter the finding into AVS.

Comment [sou87]: Basis is 774.11(g).

185.700. A person identified under R645-300-185.600 may challenge the finding using the provisions of R645-300-132.150.1 through R645-300-132.150.7.

Comment [sou88]: Basis is 774.11(h).

R645-301. Coal Mine Permitting: Permit Application Requirements.

R645-301-100. General Contents.

The rules in R645-301-100 present the requirements for the entitled information which should be included in each permit application.

110. Minimum Requirements for Legal, Financial, Compliance and Related Information.

111. Introduction.

111.100. Objectives. The objectives of R645-301-100 are to insure that all relevant information on the ownership and control of persons who conduct coal mining and reclamation operations, the ownership and control of the property to be affected by the operation, the compliance status and history of those persons, and other important information is provided in the application to the Division.

111.200. Responsibility. It is the responsibility of the permit applicant to provide to

the Division all of the information required by R645-301-100.

111.300. Applicability. The requirements of R645-301-100 apply to any person who applies for a permit to conduct coal mining and reclamation operations.

111.400. The applicant shall submit the information required by R645-301-112 and R645-301-113 ~~in a format prescribed by OSM rules governing the Applicant Violator System information needs.~~

111.500. ~~The Division will enter the information disclosed under R645-301-110 and R645-301-112 into the AVS database, but need not make a finding as provided for under R645-300-185.300 through R645-300-185.600 before entering the information into the AVS database.~~

112. Identification of Interests. An application will contain the following:

112.100. A statement as to whether the applicant ~~is and operator are~~ a corporation, partnership, single proprietorship, association, or other business entity;

112.200. The name, address, telephone number ~~and, as applicable, social security number and employer identification number~~ of the:

112.210. Applicant; ~~and any operator, if different from the applicant;~~

112.220. Applicant's resident agent; and

112.230. ~~The tax payer identification number for the applicant and operator; Person who will pay the abandoned mine land reclamation fee.~~

112.300. ~~The name, address and telephone number of each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator; for every such business in the organizational structure of the applicant and operator, the applicant must also provide the following required information for every president, chief executive officer, officer, partner, member, and director (or persons in similar positions), and every person who owns, of record, 10 percent or more of the entity: For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in R645-100-200 of this chapter, as applicable:~~

112.310. ~~The person's name, address, and telephone number, social security number and employer identification number;~~

112.320. The person's ~~position, title and ownership or control~~ relationship to the applicant, including percentage of ownership and location in organizational structure;

112.330. ~~The title of the person's~~ For each position, ~~the date the position was assumed, and when submitted under R645-300-147, the date of departure from the position;~~

112.340. Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number ~~with date of issuance~~, under which the ~~applicant, the operator, the applicant's partners or principal shareholders, and the operator's partners or principal shareholders~~ person ~~operate owns or controls~~, or previously ~~operated~~ ~~downed or controlled~~, a coal mining and reclamation operation in the United States within five years preceding the date of the application; and

112.350. The application number or other identifier of, and the regulatory authority for, any other pending coal mine operation permit application filed by the ~~applicant or the operator~~ person in any State in the United States;

112.400. For any coal mining and reclamation operation owned or controlled by either the applicant or ~~operator in the last five years, by any person who owns or controls~~

Comment [sou89]: Basis is 778.13 which no longer requires information in a prescribed format.

Comment [D90]: 30 CFR 773.8 and 774.11 require entry into the AVS database

Comment [sou91]: Basis is 774.11(e).

Comment [sou92]: Corresponding to 30 CFR 778.11(f) preliminary findings and 778.11(g) final written findings.

Comment [sou93]: Basis is 774.11(a) (1).

Comment [sou94]: Basis is 774.11(b) (3).

Comment [sou95]: Changes to 30 CFR 778.11(b)(4) no longer require name of person who will pay the abandoned mine fee, therefore we deleted that requirement and usurped this rule to make required wording changes that correspond to 30 CFR 778.11(a) (2)

Comment [sou96]: Basis is 778.11(b) and (c).

Comment [sou97]: Basis is 778.11(d) (1).

Comment [sou98]: Basis is 778.11(d) (2).

Comment [sou99]: Basis is 778.11(d) (3).

Comment [sou100]: Basis is 778.12(a), (b), and (c).

Comment [sou101]: Basis is 778.12(b).

Comment [sou102]: Basis is 778.12(c).

~~the applicant under the definition of "owned or controlled" and "owns or controls" in R645-100-200 provide the coal mining and reclamation operation's:~~

112.410. ~~Permittee's and operator's n~~Name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, ~~the date of issuance of the MSHA number,~~ and the regulatory authority; and

112.420. Ownership or control relationship to the applicant ~~and the operator~~, including percentage of ownership and location in organizational structure;

112.500. The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined;

112.600. The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area;

112.700. The MSHA numbers for all mine-associated structures that require MSHA approval; and

112.800. A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by R645-301-112.800 which is not on public file pursuant to Utah law will be held in confidence by the Division as provided under R645-300-124.320.

112.900. After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R645-301-112.100 through R645-301-112.800.

113. Violation Information. An application will contain the following:

113.100. A statement of whether the applicant, ~~the operator, or any subsidiary, affiliate, or entity which the applicant or the operator own or control or which is under common control of the operator and/or any subsidiary, affiliate, or persons controlled by or under common control with~~ the applicant has:

113.110. Had a federal or state permit to conduct coal mining and reclamation operations suspended or revoked in the five years preceding the date of submission of the application; or

113.120. ~~Forfeited a performance bond or similar security deposited in lieu of bond in the five years preceding the date of submission of the application;~~

113.200. A brief explanation of the facts involved if any such suspension, revocation, or forfeiture referred to under R645-301-113.110 and R645-301-113.120 has occurred, including:

113.210. Identification number and date of issuance of the permit, and the date and amount of bond or similar security;

113.220. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

113.230. The current status of the permit, bond, or similar security involved;

113.240. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

113.250. The current status of the proceedings; and

113.300. For any violation of a provision of the Act, or of any law, rule or

Comment [sou103]: Basis is 778.12(c)(1) through (4).

Comment [sou104]: Basis is 778.12(c)(5).

Comment [sou105]: Basis is 778.14(a).

Comment [sou106]: Basis is 778.14(a)(2).

regulation of the United States, or of any derivative State reclamation law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any coal mining and reclamation operation, a list of all violation notices received by the applicant or operator during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any coal mining and reclamation operation owned or controlled by either the applicant or ~~operator by any person who owns or controls the applicant~~. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

Comment [sou107]: Basis is 778.14 (c).

113.310. Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

113.320. A brief description of the violation alleged in the notice;

113.330. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in R645-301-113.300 to obtain administrative or judicial review of the violation;

113.340. The current status of the proceedings and of the violation notice; ~~and~~

113.350 The actions, if any, taken by any person identified in R645-301-113.300 to abate the violation; ~~and~~;

113.360 If the abatement period for a violation in a notice of violation issued under 30 CFR 843.12 or R645-400-320 has not expired, certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation.

Comment [sou108]: Basis is 778.14 (c) (7).

113.400. After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R645-301-113.

R645-302-200. Special Categories of Mining.

The rules in R645-302-200 present the requirements for information to be included in the permit application to conduct coal mining and reclamation operations for designated special categories of mining and present procedures to process said permit applications.

240. Auger Mining and Remining Operations.

241. The Rules given under R645-302-240 apply to any person who conducts or intends to conduct coal mining and reclamation operations utilizing augering or remining operations.

Comment [sou109]: Basis is 785.25

241.100. To the extent not otherwise addressed in the permit application, the applicant will identify potential environmental and safety problems related to prior mining activity at the site and that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation which shall include visual

Comment [sou110]: Basis is 785.25 (b) (1).

observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions.

241.200. With regard to potential environmental and safety problems referred to in R645-302-241.100, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the regulatory program can be met.

Comment [sou111]: Basis is 785.25(b)(2).

242. Any application for a permit that includes operations covered by R645-302-240 will contain, in the mining and reclamation plan, a description of the augering or remining methods to be used and the measures to be used to comply with R645-302-244 and R645-302-245.

Comment [sou112]: Basis is 785.25(b).

243. No permit will be issued for any operations covered by R645-302-240 unless the Division finds, in writing, that in addition to meeting all other applicable requirements of R645-200, R645-300, R645-301, R645-302-100 through R645-302-290, R645-302-310, R645-302-320, and R645-303, the operation will be conducted in compliance with R645-302-244 and R645-302-245.

244. The Division may prohibit auger mining, if necessary, to:

244.100. Maximize the utilization, recoverability, or conservation of the solid-fuel resource; or

244.200. Protect against adverse water-quality impacts.

245. Performance Standards.

245.100. Coal Recovery.

245.110. Auger mining will be conducted so as to maximize the utilization and conservation of the coal in accordance with R645-301-522.

245.120. Auger mining will be planned and conducted to maximize recoverability of mineral reserves remaining after coal mining and reclamation operations are completed.

245.130. Each person who conducts auger mining operations will leave areas of undisturbed coal, as approved by the Division, to provide access for future underground coal mining and reclamation activities to coal reserves remaining after augering is completed, unless it is established that the coal reserves have been depleted or are so limited in thickness or extent that it will not be practicable to recover the remaining coal. This determination will be made by the Division upon presentation of appropriate technical evidence by the operator.

245.200. Hydrologic Balance.

245.210. Auger mining and remining operations will be planned and conducted to minimize disturbances to the prevailing hydrologic balance in accordance with the requirements of R645-301-731.100 through R645-301-731.522, R645-301-731.800, and R645-301-751.

Comment [sou113]: Basis is 785.25(b)(1) and (2).

245.220. All auger holes, except as provided in R645-302-245.230, will be:

245.221. Sealed within 72 hours after completion with an impervious and noncombustible material, if the holes are discharging water containing acid- or toxic-forming material. If sealing is not possible within 72 hours, the discharge will be treated commencing within 72 hours after completion to meet applicable effluent limitations and water-quality standards until the holes are sealed; and

245.222. Sealed with an impervious noncombustible material, as contemporaneously as practicable with the augering operation, as approved by the Division, if the holes are not discharging water containing acid- or toxic-forming material.

245.230. Auger holes need not be sealed with an impervious material so as to prevent drainage if the Division determines that:

245.231. The resulting impoundment of water may create a hazard to the environment or public health and safety; and

245.232. The drainage from the auger holes will:

245.232.1. Not pose a threat of pollution to surface water; and

245.232.2. Comply with the requirements of R645-301-731.100 through R645-301-731.522, R645-301-731.800, and R645-301-751.

245.300. Subsidence Protection. Auger mining **and remining operations** will be conducted in accordance with the requirements of R645-301-525.210 and R645-301-525.230.

245.400. Backfilling and Grading.

245.410. General. Auger mining **and remining operations** will be conducted in accordance with the backfilling and grading requirements of R645-301-537.200 and R645-301-553.

245.420. Remining **will comply with the requirements of R645-301-553.500 and R645-301-553.600.** Where auger mining operations affect previously mined areas that were not reclaimed to the standards of the R645 Rules and the volume of all reasonably available spoil is demonstrated in writing to the Division to be insufficient to completely backfill the highwall, the highwall will be eliminated to the maximum extent technically practical in accordance with the following criteria:

245.421. The person who conducts the auger mining operation will demonstrate to the Division that the backfill, designed by a qualified registered professional engineer, has a minimum static safety factor for the stability of the backfill of at least 1.3;

245.422. All spoil generated by the auger mining operation and any associated SURFACE COAL MINING AND RECLAMATION ACTIVITIES, and any other reasonably available spoil will be used to backfill the area. Reasonably available spoil will include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment. For this purpose, the permit area will include spoil in the immediate vicinity of the auger mining operation;

245.423. The coal seam mined will be covered with a minimum of four feet of nonacid-, nontoxic-forming material and the backfill graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability;

245.424. Any remnant of the highwall will be stable and not pose a hazard to the public health and safety or to the environment; and

245.425. Spoil placed on the outslope during previous mining operations will not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

245.500. Protection of Underground Mining. Auger holes will not extend closer than 500 feet (measured horizontally) to any abandoned or active underground mine workings, except as approved in accordance with R645-301-513.700 and R645-301-523.200.

Comment [sou114]: Basis is 785.25(b)(1) and (2).

Comment [sou115]: Basis is 785.25(b)(1) and (2).

Comment [sou116]: Basis is 785.25(b)(1) and (2).

R645-303-300. Transfer, Assignment, or Sale of Permit Rights.

310. General Information. No transfer, assignment, or sale of rights granted by a permit will be made without the prior written approval of the Division. At its discretion, the Division may allow a prospective successor in interest to engage in coal mining and reclamation operations under the permit during the pendency of an application for approval of a transfer, assignment, or sale of permit rights submitted under R645-303-320, provided that the prospective successor in interest can demonstrate to the satisfaction of the Division that sufficient bond coverage will remain in place.

Comment [D117]: Basis is 774.17(a)

320. Application Requirements. An applicant for approval of the transfer, assignment, or sale of permit rights will:

321. Provide the Division with an application for approval of the proposed transfer, assignment, or sale including:

321.100. The name and address of the existing permittee and permit number or other identifier;

321.200. A brief description of the proposed action requiring approval; and

321.300. The legal, financial, compliance, and related information required by R645-301-100 for the applicant for approval of the transfer, assignment, or sale of permit rights;

322. Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent; and

323. Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as required under R645-301-800.

R645-400. Inspection and Enforcement: Division Authority and Procedures.

R645-400-300. Provisions of State Enforcement.

310. Cessation Orders.

311. The Division will immediately order a cessation of coal mining and reclamation operations or of the relevant portion thereof, if it finds, on the basis of any Division inspection, any violation of the State Program, or any condition of a permit or an exploration approval under the State Program, which:

311.100. Creates an imminent danger to the health or safety of the public; or

311.200. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

312. Coal mining and reclamation operations conducted by any person without a valid coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.

313. If the cessation ordered under R645-400-311 will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the Division will impose affirmative obligations on the person to whom it is issued to abate the violation. The order will specify the time by which abatement will be accomplished.

314. When a notice of violation has been issued under R645-400-320 and the

permittee fails to abate the violation within the abatement period fixed or subsequently extended by the Division then the Division will immediately order a cessation of coal exploration or coal mining and reclamation operations or of the portion relevant to the violation. A cessation order issued under R645-400-314 will require the permittee to take all steps the Division deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

315. A cessation order issued under R645-400-311 or R645-400-314 will be in writing, signed by the authorized representative of the Division who issued it, and will set forth with reasonable specificity:

315.100. The nature of the violation;

315.200. The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

315.300. The time established for abatement, if appropriate, including the time for meeting any interim steps;

315.400. A reasonable description of the portion of the coal exploration or coal mining and reclamation operations to which it applies; and

315.500. The order will remain in effect until the violation has been abated or until vacated, modified or terminated in writing by the Division.

316. Reclamation operations and other activities intended to protect public health and safety and the environment will continue during the period of any order unless otherwise provided in the order.

317. The Division may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

318. The Division will terminate a cessation order by written notice to the permittee, when it is determined that all conditions, practices or violations listed in the order have been abated. Termination will not affect the right of the Board to assess civil penalties for those violations under R645-401.

319. Within sixty days after issuing a cessation order, the Division will notify in writing the permittee, the operator, and any person who has been listed or identified by the applicant, permittee, or the Division as an owner or controller of the operation, as defined in R645-100-200 any person who has been identified under R645-300-148 and R645-301-112.300 and 112.400 as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

Comment [D118]: Basis is 843.11(g).

320. Notices of Violation.

...

R645-403. Alternative Enforcement.

R645-403-100. Provisions for Criminal Penalties and Civil Actions.

110. The rules in R645-403 provide guidance to exercise the authority set forth in UCA 40-10-20(4) through 40-10-20(7), 40-10-22(2), and 40-10-23.

Comment [D119]: Basis is 847.1

111. Whenever a court of competent jurisdiction enters a judgment against or convicts a person under these provisions, the Division must update AVS to reflect the judgment or conviction.

Comment [D120]: Basis is 847.2

112. The existence of a performance bond or bond forfeiture cannot be used as the sole basis for determining that an alternative enforcement action is unwarranted.

Comment [sou121]: Basis is 847.2(b).

113. Nothing in R645-403 eliminates or limits any additional enforcement rights or procedures available under federal or state law.

Comment [sou122]: Basis is 847.2(d).

120. Under UCA 40-10-20(5) and 40-10-20(7), the Division may request the Utah Attorney General to pursue criminal penalties against any person who:

Comment [D123]: Basis is 847.11

120.100. Willfully and knowingly violates a condition of the permit;

Comment [sou124]: Basis is 847.11(a)

120.200. Willfully and knowingly fails or refuses to comply with any notice, order or judicial review under R645-400-300, except as described in UCA 40-10-20(5); or

Comment [sou125]: Basis is 847.11(b)

120.300. Knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the regulatory program or any order or decision issued by the Division or Board under UCA 40-10-20 through 40-10-22.

Comment [sou126]: Basis is 847.11(c)

121. Criminal proceedings instigated under the authority of R645-403-120 must commence within five years of the date of the alleged violation.

Comment [sou127]: Rule written to reflect requirement of UCA 40-10-23

130. Under UCA 40-10-20(4) and 40-10-22(2)(a), the Division may request the Utah Attorney General to pursue civil action against a permittee, or permittee's agent, who:

Comment [D128]: Basis is 847.16(a).

130.100. Violates or fails or refuses to comply with any order or decision issued by the Division or the Board;

Comment [sou129]: Basis is 847.16(a)(1).

130.200. Interferes with, hinders, or delays the Division or its authorized representatives in carrying out the provisions the Act or its implementing rules;

Comment [sou130]: Basis is 847.16(a)(2).

130.300. Refuses to admit the Division's authorized representatives onto the site of a coal mining and reclamation operation;

Comment [sou131]: Basis is 847.16(a)(3).

130.400. Refuses to allow the Division's authorized representatives to inspect a coal mining and reclamation operation;

Comment [sou132]: Basis is 847.16(a)(4).

130.500. Refuses to furnish any information or report that the Division requests in furtherance of the provisions of the Act or the regulatory program; or

Comment [sou133]: Basis is 847.16(a)(5).

130.600. Refuses to allow access to, or copying of, those records that the Division determines necessary to carry out the provisions of the Act and its implementing rules.

Comment [sou134]: Basis is 847.16(a)(6).

131. A civil action for relief includes a permanent or temporary injunction, restraining order, or any other appropriate order by a state district court for the district in which the coal mining and reclamation operation is located or in which the permittee of the operation has their principal office.

Comment [sou135]: Basis is 847.16(b)

132. Temporary restraining orders will be issued in accordance with Rule 65A of the Utah Rules of Civil Procedure, as amended.

Comment [sou136]: Basis is 847.16(c)

133. Any relief the court grants to enforce an order under R645-403-131 will continue in effect until completion or final termination of all proceedings for review of that order under the Act or its implementing rules unless, beforehand, the Utah Supreme Court or district court granting the relief on review grants a stay of enforcement or sets aside or modifies the order.

Comment [sou137]: Basis is 847.16(d)